IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.41 OF 1997
IN
WRIT PETITION NO.5264 OF 1996
WITH
CIVIL APPLICATION NO.8766 OF 1998
WITH
CIVIL APPLICATION NO.6085 OF 2000
WITH
CIVIL APPLICATION NO.14 OF 2003

Lect.S.V.Pandharpure & Ors. ..Petitioners.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Mr.S.S.Pakale for petitioners.

Mr.P.B.Deo for respondent No.4.

Mr.R.R.Mahagaonkar for respondent No.5.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 20, 2006.

P.C. :

1. Heard counsel for the parties.

2. This petition was heard on merits, as can be seen from the order passed by the Division Bench dated May 6, 1998. The Division Bench of this court has recorded clear finding of guilt against the contemnors having failed to pay the requisite amount towards salary of the teachers from August, 1997 in accordance with the Act and Rules and further sum of

Rs.13 Lakhs, as noted in the said order. Suffice it to observe that it is not open for me to reconsider the finding so recorded by the Division Bench. Firstly because, on merits there is already decision of this court and secondly, it is by the Division Bench.

3. The petition has now been placed before the Single Judge in view of the amendment to the High Court Appellate Side Rules. Even if the matter was put before the Division Bench on the finding of guilt recorded against the contemnors in terms of order dated May 6, 1998, the same has become final and could not be reopened. What is relevant to note is that in the same order the Division Bench proceeded to pronounce the sentence to be suffered by the contemnors of simple imprisonment of 15 days and to pay fine of Rs.2,000/- each in default to undergo further Simple Imprisonment for one month. However, the order of sentence was kept in abeyance with a view to give opportunity to the contemnors to purge the contempt by depositing the outstanding amount towards salary of the teachers from August, 1997 as per the Act and Rules and further sum of Rs.13 Lakhs. The order also records that if such payment was to be made by the contemnors then the order of sentence

would stand revoked. Having regard to the nature of the order passed by the Division Bench it is plainly one of allowing the contemnors to purge the contempt.

4. The question required to be considered by me is limited to whether the opportunity given by the Division Bench in its order dated May 6, 1998 has been availed by the contemnors. The record indicates that the contemnors have deposited sum of Rs.13 Lakhs in compliance of the second part of the said order. That deposit however, has been made beyond the specified time. Even if this court was to take a liberal view of the matter and excuse the delay in depositing the amount of Rs.13 Lakhs in terms of second part of the order dated May 6, 1998, the fact remains that the contemnors have still not fully complied with the first part of the order requiring the contemnors to arrange for payment of salary of the teacher from August, 1997 as per the Act and Rules. In the order dated May 6, 1998, the Division Bench has adverted to the amount to be paid in this behalf by the contemnors as has been determined by the Deputy Director of Technical Education in his report purported to be dated 17th March, 1998. The report quantifies the amount towards the head of Unpaid salary from August, 1997 to be approximately

Rs.90 Lakhs. Even if the case of the contemnors that amount of Rs.13 Lakhs is component of this figure of Rs.90 Lakhs is accepted, which amount has already been paid by the contemnors, even then, the contemnors were obliged to pay further sum of Rs.77 Lakhs, which amount has still not been paid.

5. To get over this position the counsel for the respondent No.4 would contend that the report prepared by the Deputy Director Technical Education is defective. The respondent No.4 had submitted objection to the said report and so long as the said objection was not decided one way or the other, the contemnors cannot be expected to pay such substantial amount on the assumption that the outstanding amount towards salary from August, 1997 is in the range of Rs.90 Lakhs, as noted by the Deputy Director of Technical Education. This argument is devoid of any substance. Indeed, the counsel for the respondent No.4 invited my attention to the minutes of the order passed dated 1st December, 1997 as well as the order dated 30th March, 1998. The submission made on behalf of the respondents/contemnors clearly overlooks the position that when the Division Bench proceeded to hear the contempt petition on May 6, 1998, all these orders were part of the record before

that court. Notwithstanding those orders, the Division Bench proceeded to find the contemnors guilty of having committed Civil Contempt and also pronounced the sentence of imprisonment and fine. In that sense, the contemnors were obliged to deposit not only the amount of Rs.13 Lakhs but also the amount towards salary of the teacher from August, 1997, as quantified in the report of the Deputy Director of Technical Education. It was not open to the contemnors to assume that the said report cannot be acted upon. No amount of argument can salvage the situation for the respondent No.4.

6. Strong reliance is placed on the observation made by Division Bench order dated March 30, 1998 to contend that the court granted liberty to the petitioner to file objection to the report of the Deputy Director of Technical Education, which presupposes that the said report has not become final. This submission is complete misreading of the order dated March 30, 1998. In the first place, the order dated March 30, 1998 was before the same Division Bench, which proceeded to pass order recording finding of guilt against the contemnors on 6th May, 1998. Besides, my understanding of the said order is that the stand taken on behalf of the

petitioner in the said petition No.69/98- contemnors herein, has been rejected. All that the court has observed that if the contemnors had any objection to the report they may question the same, as may be advised. That does not mean that the contemnors has been absolved of complying with the direction of deposit in terms of the report of the Deputy Director of the Technical Education. What is also relevant to notice is that, categorical assertion has been made by the petitioner in the further affidavit filed in the present petition that the contemnors have not only failed to deposit requisite amount towards salary from August, 1997 but also not paid the regular salary to the staff despite several orders passed against the contemnors repeatedly.

7. Be that as it may, for the purpose of formal disposal of this petition, I am required only to consider whether the contemnors have fully complied with their obligation as noted in the order dated 6th May, 1998. This aspect will have to be answered against the contemnors. Accordingly, as the contemnors have failed to abide by the opportunity granted by the Division Bench of this court in terms of order dated 6th May, 1998, the only course open for me is to formally dispose of this petition by

restating the operative order passed by the Division Bench which reads thus:

> "We accordingly hold the Chairman A.R.Natekar and Secretary B.T.Kinikar are of guilty of committing contempt of this court and sentence each of them fifteen days simple imprisonment and to pay fine of Rs.2000/- each, in default to undergo simple imprisonment for one month"

8. The concerned authorities are called upon to take steps in terms of the said order passed by the Division Bench.

9. Civil applications are disposed of with liberty to the applicants to take recourse to such remedy as may be permissible by law. If the applicants take recourse to appropriate remedy, the same will have to be decided on its own merits, in accordance with the law, uninfluenced by any of the observations in this order.

10. At this stage, respondent Nos.4 and 5/contemnors through counsel pray that operation of this order be stayed to enable them to take up the

matter in appeal. This request being reasonable, will have to be accepted, as remedy of statutory appeal is available to the contemnors against this order. Hence, the above order not to be given effect for a period of four weeks from today.

11. Advocate for the petitioner assures to file memo of addresses of the petitioners in this court within two weeks from today. That assurance is accepted.

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CORAM: A.M.KHANWILKAR,J

DATE : JULY 20, 2006.

P.C. :

1. There is a clerical error in the order passed yesterday dated July 19, 2006. In line 3 of paragraph-1 of the order, the date mentioned is 6th May, 1988 instead of 6th May, 1998. Necessary correction be carried out and fresh copy of the order be issued.